

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



Staff: Gary Cannon-SD
Staff Report: March 23, 2006
Hearing Date: April 12-14, 2006

Wed 10a

REVISED CONDITIONS AND FINDINGS
AMENDMENT REQUEST

Application No.: 6-88-535-A4

Applicant: Dan Stone

Original

Description: Demolish existing residence and construct two approximately 3,500 sq. ft., three bedroom, single-family residences on two vacant lots totaling 1.44 acres. Also proposed is a fee dedication of the wetlands portion of the parcels.

Proposed

Amendment: Request to amend the original permit to allow for the construction of a deck that includes an approximately 42-inch high rail surrounding the deck within the open space deed restricted area. Deck will be constructed on three existing approximately 18-ft. high concrete pilings.

Site: 2512 San Elijo Avenue, Cardiff, Encinitas, San Diego County.
APN 261-190-30

STAFF NOTES:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on January 12, 2006. In its action, the Commission approved the construction of a deck with conditions to assure the deck is constructed entirely outside of the deed restricted open space area, does not include the use of a glass as an element in any railing, that all invasive species are removed from within the deed restricted open space area, and that adequate landscaping be provided to screen the existing home and protect the deed restricted open space area and the resources of San Elijo Lagoon.

Date of Commission Action: January 12, 2006

Commissioners on Prevailing Side: Burke, Orr, Kram, Kruer, Neely, Allgood, Potter, Reilly, Secord, Shallenberger, Wan and Chairman Caldwell.

The proposed development occurs within the City of Encinitas's coastal development permit jurisdiction. As such, the City has reviewed and approved the proposed development under a separate coastal development permit (Ref. 04-078 CDP) with

conditions. The local coastal development permit was appealable, however, no appeals were filed. In particular, Commission staff did not believe an appeal was necessary at the time since the local decision was conditioned with, among other things, a requirement that the applicant first receive approval from the Coastal Commission of an amendment to Coastal Commission permit # 6-88-535 to allow development to occur within the deed restricted area.

Standard of Review: City of Encinitas certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act.

~~Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the request to allow for the construction of a deck within the previously required open space area. The primary issues raised by the proposed development relate to protection of wetlands and scenic visual resources. The subject site is on a hillside adjacent to and overlooking San Elijo Lagoon. The original coastal development permit approved by the Commission prior to certification of the City's LCP required that an open space area between the residences and the nearby wetlands be deed restricted to prohibit development from occurring within the area as a protective buffer between the residences and the nearby wetlands and lagoon resources. The Department of Fish and Game has reviewed the project and determined that a lesser buffer resulting from the deck's construction will be sufficient to protect the nearby wetlands. In addition, the original permit required that effective landscape screening of the homes be installed along the southern perimeter of the homes and that the area within the open space be planted with native species and that non-native, invasive plants be removed. This landscaping was not installed or has subsequently been removed. As part of the subject amendment request, the applicant has submitted a revised landscaping plan that as conditioned meets the requirements of the original permit as it relates to the subject residence. With conditions requiring submission of final deck and landscape plans that have been revised to satisfy the concerns of the Department of Fish and Game, the proposed development is consistent with the Coastal Act and certified LCP.~~

Substantive File Documents: City of Encinitas Local Coastal Program; Coastal Development Permit 6-88-535/De Remer and Coastal Permit Amendments Nos. 6-88-535-A1, A2 and A3/De Remer; City Coastal Development Permit 04-078; "Summary of Wetland Boundary Determination for 2512 San Elijo Avenue, Cardiff" by Mooney & Associates, dated 6/13/03; Letter from Dept. of Fish and Game, "Re: Dan Stone residence deck at San Elijo Lagoon, Encinitas, California" dated 2/8/05.

I. ~~PRELIMINARY STAFF RECOMMENDATION:~~

~~**MOTION:** *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-88-535 pursuant to the staff recommendation.*~~

STAFF RECOMMENDATION OF APPROVAL:

~~Staff recommends a YES vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.~~

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

~~The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of certified local coastal program and the public access and recreation policies of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.~~

I. MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on January 12, 2006 concerning approval of Coastal Development Permit Amendment No. 6-88-535-A4*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the January 12, 2006 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. The Commissioners eligible to vote are:

Commissioners Allgood, Burke, Kram, Kruer, Neely, Orr, Potter, Reilly, Shallenberger, Wan and Chair Caldwell.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for *Coastal Development Permit Amendment No. 6-88-535-A4* on the ground that the findings support the Commission's decision made on January 12, 2006 and accurately reflect the reasons for it.

II. Special Conditions.

The permit amendment is subject to the following conditions:

1. The following condition replaces Special Condition #6 of the original permit in its entirety as it relates to 2512 San Elijo Avenue (Ref. Exhibit #5 for the previous version of this condition). The original Special Condition #6 as it applies to the other property at 2516 San Elijo Avenue shall remain in effect.

6. Revised Landscape Plan. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 6-88-535-A4**, the applicant for that amendment shall submit, for the review and written approval of the Executive Director, a revised landscape plan for the residence at 2512 San Elijo Avenue that has been approved by the City of Encinitas Fire Department. Said plan shall be in substantial conformance with the submitted plans dated December 5, 2005 by Merkel and Associates, Inc., but shall be revised to include the following.

- (a) The removal (by hand) of all pampas grass from within the deed restricted open space area. Said removal shall occur consistent with current practices to prevent seeding by covering of the grass plumes prior to removal. Removal of other exotics (iceplant) from within the deed restricted open space area is also required and the area of removal of the pampas grass and iceplant shall be replanted with native, non-invasive plant species.
- (b) The use of tall shrubs and/or trees and creeping shrubs (hanging) shall be used to screen the existing home and parking area from views from the lagoon and other public areas south of the subject site. All landscaping shall be drought-tolerant, native and non-invasive plant species (i.e., no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site). No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized,
- (c) All planting, ~~and~~ hand removal of pampas grass and removal of other exotics (such as iceplant) shall be completed by within 60 days after construction of the deck,
- (d) All required plantings will be maintained in good growing conditions throughout the life of the project, and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.
- (e) A written commitment by the applicant that five years from the date of the issuance of the coastal development permit amendment for the deck structure, the applicant will submit for the review and written approval

of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

(f) The applicant shall agree to apply for an amendment to this coastal development permit should further enhancement of the wetland buffer be proposed in the future.

(g) The use of insecticides and rodenticides shall be prohibited.

The permittee shall undertake development in accordance with the approved final landscape plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Final Revised Plans. **PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 6-88-535-A4**, the applicant for that amendment shall submit, for review and written approval of the Executive Director, final plans for the deck proposed in that amendment that have been developed in consultation with the California Department of Fish and Game and approved by the City of Encinitas. Said plans shall be in substantial conformance with the submitted plans dated February 27, 2004 (as revised on July 14, 2005 and September 15, 2005) by Tom McCabe, AIA, but shall be revised to include the following:

- a. ~~The deck shall not extend more than 2 feet south of the existing concrete pylons that are proposed as foundation support of the deck. No portion of the deck or deck foundation shall be located within the deed restricted open space area as identified on Exhibit #3 of the original staff report for CDP #6-88-535 and Exhibit #3 of the subject amendment CDP #6-88-535-A4.~~
- b. ~~If a glass railing is proposed around the deck, the glass shall be tinted. The use of glass as an element of any deck railing shall be prohibited.~~
- c. The color of the deck shall be restricted to a color compatible with the surrounding environment (earth tones) including shades of green, brown, and gray, with no white or light shades and no bright tones except as minor accents.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Deed Restriction. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (6-88-535-A4), the applicant for this amendment shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit amendment, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit amendment, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property

4. Prior Conditions of Approval. All other terms and conditions of the original approval of Coastal Development Permit #6-88-535, as amended, not specifically modified herein, shall remain in full force and effect.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The original project involved the construction of two residential homes on steep slopes adjacent to San Elijo Lagoon, an environmentally sensitive habitat (ref. CDP 6-88-535/De Remer). Special Conditions of approval for the residential developments included a requirement to deed restrict an open space area approximately 75 to 100 ft. in width between the residences and the wetland of San Elijo Lagoon. The applicant subsequently recorded the deed restriction. The open space deed restriction “prohibits any alteration of landforms, removal of vegetation or erection of structures of any type, . . . without the written approval of the Coastal Commission or its successor in interest.” The subject amendment essentially involves a request for written approval from the Coastal Commission to allow construction of a deck within the open space. Thus, the open space deed restriction area is not proposed to be revised.

In addition, special conditions of approval for the residences included a requirement to revegetate and landscape the area between the homes and the wetlands. Some of the revegetation/landscaping was authorized to occur within the deed restricted open space area. The applicant was required to remove invasive, non-native plants and to re-plant with drought-tolerant native plants. In addition, the applicant was required to plant trees and other landscaping along the southern perimeter of the buildings to break-up the façade of the buildings and screen the buildings from public views from within the

lagoon and other public areas such as Highway 101 (Ref. Special Condition #6 of CDP #6-88-535). In addition, the permit was conditioned to require that the residences be designed with exterior materials and colors that are earth toned so as to minimize the project's contrast with the surrounding hillside and the lagoon environment (Ref. Special Condition #7 of CDP #6-88-535). However, the homes have subsequently been painted white and the landscaping was either not placed or has been subsequently removed. There currently is no landscaping that breaks up the façade of the residences. As a result, the existing white-colored residences are highly visible from Highway 101 and other public areas.

Since the original permit approval, three additional amendments have been approved by the Commission for the subject development. In October 1989, the Commission approved an immaterial amendment to allow grading to occur during the rainy season until at least November 15, 1989 (Ref. 6-888-535-A1/De Remer). In May of 1991, the Commission approved an immaterial amendment for temporary storage of approximately 200 cu. yds. of grading material on the slope between the open space area and the home (Ref. 6-88-535-A2/De Remer). Finally, in September 1992, the Commission approved an immaterial amendment for the construction of a deck on the street side of the most southern of the two residences to allow for a secondary exit from the residence to the street (Ref. 6-88-535-A3/De Remer).

The applicant is requesting to amend the original permit to allow construction of an approximately 664 sq. ft. deck that will extend approximately 22 to 25 ft. into the open space deed restricted area. The deck will be supported in place by three existing approximately 18 ft. high, 2 to 3 ft. diameter concrete pylons that are remnants of an old kelp harvesting plant that existed on the site prior to the Coastal Act. Currently, in this location, the wetlands buffer is approximately 75 ft. wide and with construction of the deck, the wetland buffer will be reduced to approximately 50 ft. Most, if not all, of the deck will be located within the deed restricted open space area. The deck is proposed to be surrounded by an approximately 42-inch high rail. Other elements of the project as approved by the City include construction of concrete steps to extend from the west side of the residence to the deck. A 20 ft.-long retaining wall is also proposed to support a proposed 20 ft.-long, 2 ft. wide barbeque/countertop/refrigerator complex. The concrete steps, barbeque complex and retaining wall are proposed to be located outside of the open space deed restricted area between the residence and the deck and are not therefore part of the subject amendment request. The subject amendment request only involves the construction of the deck within the open space area and a new landscape plan for one of the homes.

2. Environmentally Sensitive Habitat/Wetlands. The following certified Land Use Policies from the certified Encinitas LCP apply to the proposed development:

Resource Management Policy 10.6:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the

U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value when ever possible.

[. . .]

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

[. . .]

Resource Management Policy 10.10

The City will encourage and cooperate with other responsible agencies to plan and implement an integrated management plan for the long-term conservation and restoration of wetlands resources at San Elijo Lagoon (and where it applies, Batiquitos Lagoon), Escondido and Encinitas Creeks and their significant upstream feeder creeks, according to the following guidelines:

[. . .]

Adequate buffer zones should be utilized when development occurs adjacent to the floodplain and sensitive habitats; 100 foot wide buffers should be provided adjacent to all identified wetlands, and 50 foot wide buffers should be provided adjacent to riparian areas. In some cases, smaller buffers may be appropriate, when conditions of the site as demonstrated in a site specific biological survey, the nature of the proposed development, etc., show that a smaller buffer would provide adequate protection; and when the Department of Fish and Game has been consulted and their comments have been accorded great weight. (Emphasis added)

[. . .]

Human uses of the wetland and adjacent areas should be compatible with the primary use of the wetland as a natural value;

(The City's certified Implementation plan contains similar policy requirements.)

The applicant is requesting to allow construction of a deck within a deed restricted open space area that functions as an approximately 75 to 100 ft.-wide natural buffer between the wetlands of San Elijo Lagoon and the existing residence. Resource Management Policy 10.10 of the certified LCP requires a 100 ft. buffer adjacent to wetlands, but allows for a smaller buffer, if it can be documented that a lesser buffer would provide adequate protection based on consultation with the Department of Fish and Game. In approving the residential structures in 1989, the Commission found that the buffer was necessary to prevent future impacts to the environmentally sensitive habitat of the lagoon. Along with requiring revegetation of the site using native plants and the removal of invasive, non-native plants, the project was designed to assure that future impacts to the wetland resources would be effectively mitigated. The current applicant is requesting permission to construct an approximately 664 sq. ft. deck that extends approximately 22 to 25 ft. into the 75 to 100 ft. wide wetland buffer.

The applicant has performed an updated wetlands delineation for the area surrounding the residence and open space area ("Summary of Wetland Boundary Determination for 2512 San Elijo Avenue, Cardiff" by Mooney & Associates dated 6/13/05). This report identifies that the existing subject residence is located from between 75 ft. and 130 ft. from wetlands. The deck is proposed to be sited on the southwest side of the property in proximity to the closest identified wetlands, i.e., the wetlands that are approximately 75 ft. from the residence. The Department of Fish and Game (DFG) has reviewed the development request and the wetlands delineation and has written a letter accepting a reduced buffer at this location with requirements that the deck not extend more than 2 ft. south of the pylon foundations, that if glass is used for the 42-inch high rail surround the deck that it be tinted to make it more visible to birds and that any lighting be of low intensity and directed away from the lagoon (Ref. Exhibit #6). In addition, the letter requests that pampas grass be removed from within the wetland buffer. The City's LCP, as cited above, does allow for a reduced buffer after consultation with DFG and in this case it has been determined that a reduction of the buffer to accommodate the installation of the deck, as conditioned by DFG, will continue to afford adequate protection to the nearby wetlands. This is particularly true since the deck will be constructed over three existing, approximately 3 ft. diameter, 18 ft. high concrete pylons that have existed in this location prior to the Coastal Act and, therefore, represents an area that does not currently function completely as vegetated buffer area. In addition, as identified by the DFG's letter, the proposed deck will be located at an elevation of approximately 18 ft. above the wetlands such that the difference in topography makes a reduced buffer more acceptable.

As noted above, although the DFG has accepted the applicant's request to construct the deck within the deed restricted open space area, it has done so with the understanding

that the deck not extend more the 2 feet south of the concrete pylon foundations, the approximately 42-inch-high railing be tinted to make it visible to birds, lighting be of low intensity and directed away from the lagoon, and that pampas grass be removed within the wetlands buffer. ~~Only if these conditions are satisfied can the Commission find the proposed deck within the deed restricted open space is consistent with the wetland protection policies of the LCP which allow for a reduced wetlands buffer if found acceptable by DFG.~~ Although the DFG has not objected to the project as proposed by the applicant, if the applicant adheres to a series of conditions, the Commission finds that the open space deed restricted area was a necessary condition of approval for the construction of the homes in order to protect the environmentally sensitive habitat and wetland resources of San Elijo Lagoon. The deed restricted open space area continues to be necessary as a natural buffer between the residential structures and the lagoon and should be protected from further development encroaching into the buffer. The applicant has identified that the buffer currently contains invasive species such as pampas grass and iceplant and is currently subject to runoff from the developed site which has resulted in sediment entering into the buffer area. Thus, in this case, notwithstanding the DFG's conclusion, it cannot be shown that a smaller buffer would adequately protect the existing resources. Instead, the applicant should enhance the buffer through the removal of invasive species and replanting with native species. The Commission approves the construction of a deck but only if no portion of the deck or its foundations lie within the deed restricted open space area and only if the proposed use of glass in the deck railing is eliminated. Glass railing, even tinted, can result in birds strikes against the glass, which would be especially troubling in a location such as this, given the adjacent resources.

The conditions of this amendment include Special Condition #32, which requires the submission of final plans for the deck construction that have been approved by the City of Encinitas and that have been revised to reflect that ~~the no portion of the deck will extend into the deed restricted open space area and that no glass railing will be constructed no more than 2 ft. south of the existing concrete pylons that will be used for the deck's foundation.~~ Since the project site is located adjacent to San Elijo Lagoon which serves as habitat for many bird species, including the endangered California Least Tern, glass railings in this location could have adverse effects on birds that fail to see the glass. The original approval of the residence(s) included a requirement that invasive and non-native vegetation be removed from the development area and that all areas disturbed during construction be revegetated with native species. While it is not clear if this occurred, the subject amendment, which only includes one of the two development sites subject to the original approval, does propose the installation of native and non-invasive plants in and around the home. Since the deck represents additional development adjacent to the open space area and since the applicant also proposes to remove pampas grass from within the open space area, the Commission requires that the deed restricted open space area be enhanced to optimize its intended wetlands buffer function. The applicant has submitted a revised landscape plan for the residence (re. Exhibit #7) which makes use of native plants (San Diego Marsh Elder, Toyon and Redberry) that will be of sufficient height and placement to meet the screening requirements of the original permit, however the plan does not include removal of the pampas grass from within the open space area as required by DFG or the removal of other exotics (such as iceplant) as

required by the Commission and accepted by the applicant's representative at the hearing. ~~Since the deck can only be authorized within the open space area per the requirements of DFG,~~ Special Condition #1 of this amendment modifies and replaces the underlying Special Condition 6 (as it relates to the subject property owner) to require the submission of a final landscape plan approved by the City of Encinitas to reflect that the proposed landscaping has been revised to include removal of all pampas grass and other exotic vegetation (iceplant) from within the open space deed restricted area on the subject site and that the area be replanted with native vegetation. To prevent the spread of this invasive species, this condition also requires that the removal be done consistent with current practice by covering the grass plumes prior to removal. In addition, this condition requires that the landscape plan be implemented and completed within 60 days of the deck's construction, that all plantings be maintained for the life of the project, that the use of insecticides and rodenticides is prohibited, and that the applicant monitor the installed landscaping for a five year period and report back to the Commission on its status. (The original permit with Special Condition #6 is attached as Exhibit #5.) DFG has indicated that with the removal of pampas grass in the buffer area and other design modification to the project, that the proposed reduced buffer can be supported. However, DFG also indicates that further enhancement of the buffer area in the future may be proposed by others, but is not warranted at this time. Therefore, the special condition advises the applicant that any future work to further enhance the buffer would require authorization from the Commission as an amendment to this permit. The condition includes the requirement of Fire Department approval of the landscape plan to assure that the plan does not conflict with any brush management requirements of the home. Finally, Special Condition #4 has been attached to require the applicant to record a deed restriction against the property so as to notify all future property owners of the terms and conditions of approval to which they will also be responsible to adhere to.

As conditioned, ~~Since~~ the proposed deck will be located outside of the deed restricted open space area, will not involve the use of a glass railing ~~on existing pylons,~~ and, thus, will not result in any direct or indirect impacts on native upland or wetland habitat. In addition, the final plans must be ~~and has been~~ reviewed and found to be acceptable by the Department of Fish and Game in ~~its proposed~~ the revised location outside of the deed restricted open space area so that ~~the proposed amendment request for the construction of a deck within the deed restricted open space area is,~~ as conditioned, the proposed project will be consistent with the City's LCP provisions relating to wetlands protection.

3. Protection of Viewsheds. Resource Management (RM) Policy 4.6 of the City's certified LUP requires that:

The City will maintain and enhance the scenic highway/visual corridor viewsheds.

In addition, RM Policy 4.7 requires:

The City will designate the following view corridors as scenic highway/visual corridor viewsheds:

. . . San Elijo Ave. (and Hwy 101) south of Cardiff Beach State Park to Santa Fe Drive . . .

In addition, RM Policy 4.8 states that:

It is intended that development would be subject to the design review provisions of the Scenic/Visual Corridor Overlay Zone for those locations within Scenic View Corridors, along scenic highways and adjacent to significant viewsheds and vista points with the addition of the following design criteria:

[. . .] Development that is allowed within a viewshed area must respond in scale, roof line, materials, color, massing, and location on site to the topography, existing vegetation, and colors of the native environment.

The original permit for the construction of the homes required that the visual impacts of the residences be mitigated by the planting of effective landscaping screening along the southern perimeter of the homes and by restricting the colors of the homes to earth tones. Both residences are located on a slope overlooking San Elijo Lagoon, Highway 101 and Cardiff State Beach. As such the homes are highly visible by motorists and beachgoers. Although required by coastal development permit #6-88-535, both property owners have failed to plant trees and other landscaping along the southern perimeter of the residences to break up the façade of the homes and have painted their homes white in apparent violation of the permit. The LCP policies cited above clearly require that the viewshed along San Elijo Drive at this location overlooking the lagoon and ocean be protected. In compliance with the landscaping condition of the original permit, the applicant in 1989 submitted a landscape plan (subsequently approved by the Executive Director) for the property that including landscaping of the area now proposed for the deck. However, either the original applicant failed to plant the landscaping or it was subsequently removed. In any event, unless new landscaping that meets the intent of the original permit, i.e., to sufficiently break-up the façade of the residence to lessen its visual prominence, is installed elsewhere on the site, the construction of the deck might have precluded sufficient landscaping from eventually being installed. As part of the subject amendment request, the applicant has submitted a new landscape plan for Commission approval that provides for effective screening of the subject residence through the use of native vegetation of sufficient height to be located along southern perimeter of the home and that is located outside of the area proposed for the deck. ~~Therefore, since the area proposed for the deck is no longer necessary for landscaping purposes in terms of visual mitigation for the home, the construction of the deck will not prevent the required landscaping from occurring.~~ However, since the Commission is requiring that the deck not be constructed within the deed restricted open space area, the applicant is required to submit a revised landscape plan for that area and the other open areas of the site for review and approval by the Executive Director that documents effective landscaping consistent with the intent of the original permit is proposed.

The proposed deck by itself does not necessarily raise significant visual concerns since it will be located at a lower elevation than the residence and is largely blocked visually by the railroad track berm that crosses San Elijo Lagoon. The deck is proposed to be a wooden with glass railing approximately 42 inches high. As previously stated, DFG is recommending that the glass be tinted to make it visible to birds that otherwise might not see it and might fly into it. However, the Commission has determined that insufficient information has been provided to document that tinting of the glass will prevent or eliminate bird strikes into the glass. Given that this site is along a bird flyway, which includes use by endangered species, the Commission is requiring that no glass be used as an element of any deck railing. Although the wooden deck and glass railing is unlikely to be seen from public areas, to assure there is no potential of adverse visual impacts associated with its construction, Special Condition #73c requires that the deck only be colored with earth tones compatible with the surrounding natural environment.

Since the project has been conditioned to require ~~Because the applicant is proposing~~ significant native landscaping to satisfy the landscaping requirements of the original coastal development permit and the deck itself will not result in adverse visual impacts, the proposed development will be consistent with the visual resource policies of the LCP.

4. Public Access. The project site is located on the south side of San Elijo Avenue, overlooking San Elijo Lagoon, Highway 101 and Cardiff State Beach. San Elijo Avenue in this location is designated as the first public roadway. As the proposed development will occur between the first public roadway and the sea (San Elijo Lagoon in this case), pursuant to Section 30.80.090 of the City's LCP and Coastal Act section 30604(c), a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act.

The proposed development is located adjacent to San Elijo Lagoon but public trails across the site toward the lagoon do not currently exist and none are currently planned at this location. Public access and recreational opportunities, in the form of hiking, do exist in the area, providing access into San Elijo Lagoon Ecological Reserve and Regional Park. Access to the trail system is available at the San Elijo Lagoon Visitor Center, which is located within ¼ mile of the subject site. Access to the shoreline from this site through the lagoon also does not exist and would not be appropriate from this site since the Amtrak/Coastal Rail train tracks lie between this site and the shoreline. The proposed amendment request would not, therefore, impede access to the lagoon or to any public trails. Therefore, the proposed development would have no adverse impacts on public access or recreational opportunities, consistent with the public access policies of the Coastal Act.

5. Violation of Coastal Act. The existing residential developments were approved by the Commission in 1989 with special conditions that required the use of earth tones in the materials and coloring of the residences and extensive landscaping including trees along the southern perimeter of the residences. In an apparent violation of the permit, the homes were colored white and no trees or other effective landscaping were installed along the southern perimeter of the homes as required to break up the façade of the

buildings. One of the two property owners has submitted the subject permit amendment, which includes a new landscape plan for his residence at 2512 San Elijo Avenue, which, as conditioned, has been found to be consistent with the intent of the landscaping condition of the original permit. However, the applicant has not proposed re-coloring of his residence to conform to the requirements of the original permit that involve the use of earth tones, and the other residence at 2516 San Elijo Avenue is not a party to this subject amendment. These matters will be handled through a separate enforcement action.

Although a violation of coastal development permit 6-88-535 has occurred, consideration of this amendment application by the Commission has been based solely upon the policies and provisions of the certified City of Encinitas LCP as well as the public access and recreation policies of Chapter 3 of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violations.

6. Local Coastal Planning. The City of Encinitas has a certified LCP and has been issuing coastal development permits for its areas of jurisdiction since 1995. The subject site is zoned and designated for residential use in the certified LCP. The proposed request to allow development within the deed restricted open space area, thus creating a reduced wetlands buffer, ~~acceptable to the Resources agencies~~ is not consistent with the intent and goals of the wetlands protection policies of the LCP. Consistent with the intent, goals and requirements of the LCP, the Commission has prohibited the construction of the deck within the deed restricted open space area but has allowed for enhancement of the buffer through the removal of invasive species and the replanting of the area with native species. ~~While the City of Encinitas has already approved the subject project and found it to be consistent with the LCP, its approval was conditioned on the applicant receiving approval by the Coastal Commission of an amendment to the original permit for the residence, which prohibited development within the open space area (Ref. 6-88-535/De Remer).~~

The Commission's jurisdiction over this amendment, notwithstanding the City's certified LCP, is based on the facts that the Commission approved the original development at this site and the proposal would modify conditions of that approval (such as those relating to landscaping, colorizing of the residences and a deed restricted open space area), as well as section 30.80.045 (E) of the City's Implementation Plan, which states that any development authorized by a Commission-issued permit "remains under the jurisdiction of the Commission for purposes of condition compliance, amendment..." The ~~proposed~~ landscaping plan, as conditioned, is consistent with the visual resource protection policies of the LCP, and the deck, as conditioned, is consistent with the other resource protection policies of the LCP. Therefore, the Commission finds that the subject proposal would not prejudice the ability of the City of Encinitas to continue to consistently implement its certified LCP.

7. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the visual resource and wetland protection policies of the certified Local Coastal Plan and the public access and recreation policies of the Coastal Act. Mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

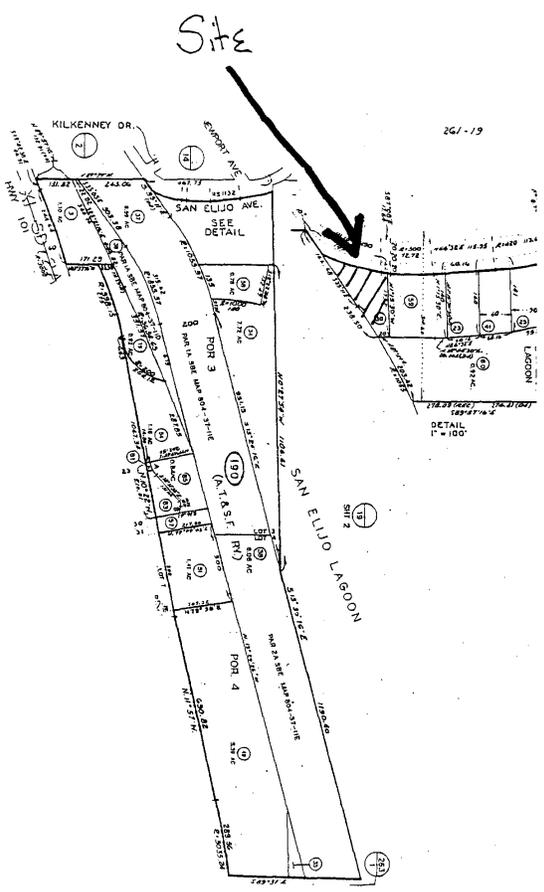
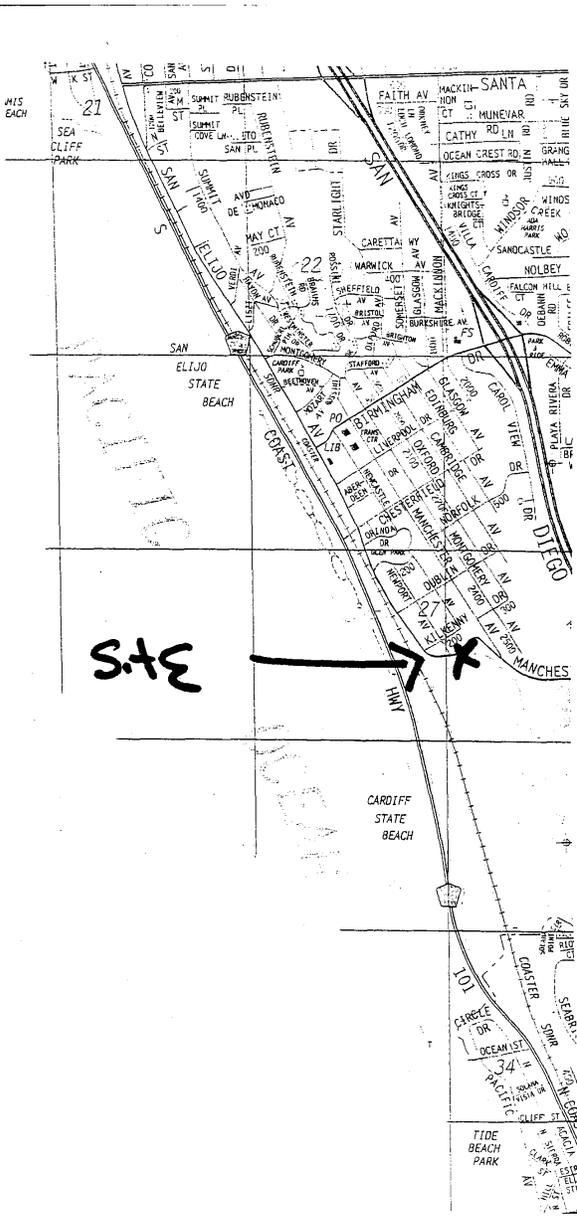
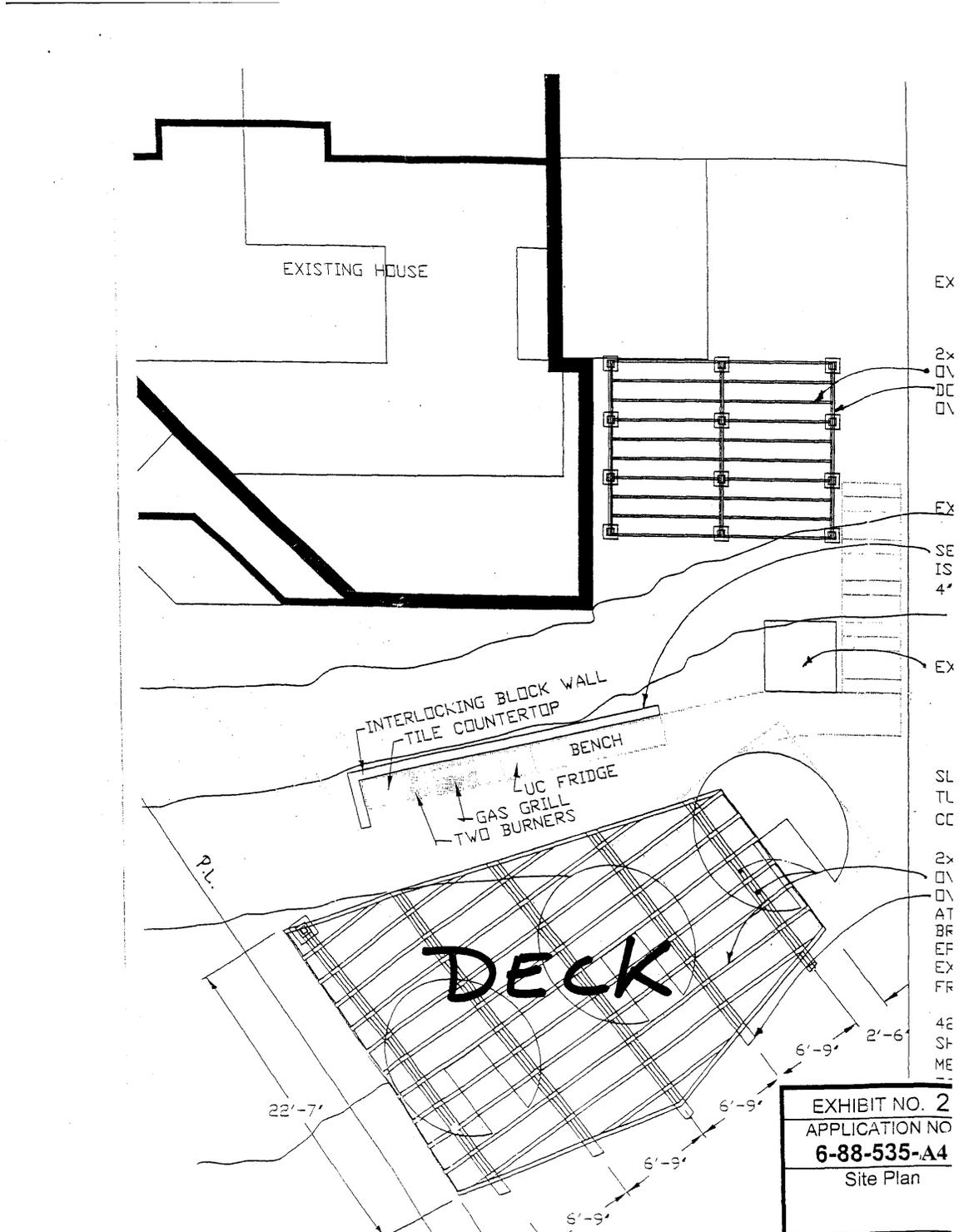


EXHIBIT NO. 1
APPLICATION NO.
6-88-535-A4
Location Map
California Coastal Commission



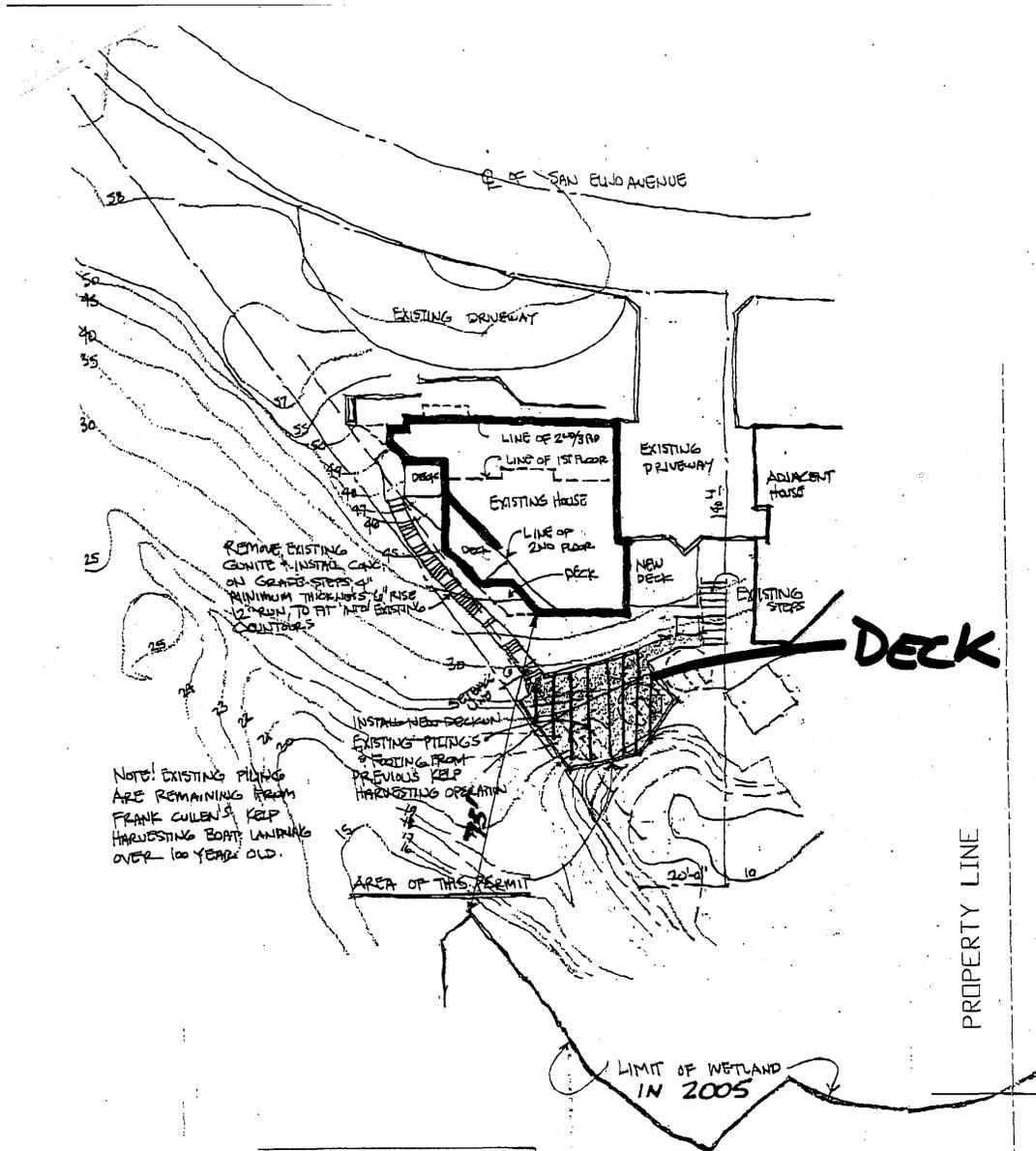


EXHIBIT NO. 4
APPLICATION NO.
6-88-535-A4
Wetlands as identified by applicant in 2005

STATE OF CALIFORNIA—THE RESOURCES AGENCY

GEORGE DEUKMEJIAN, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-3520
(619) 297-9740

COASTAL DEVELOPMENT PERMIT NO. 6-88-535
Page 1 of 5



On January 10, 1989, the California Coastal Commission granted to
Joanne De Remer
this permit for the development described below, subject to the attached
Standard and Special Conditions.

Description: Demolish existing fire damaged residence and construct two
approximately 3,500 square foot, three-bedroom single family
residences on two vacant parcels totalling 1.44 acres. Also
proposed is fee dedication of wetland portion of parcels.

Lot Area	1.44 acres
Building Coverage	4,200 sq. ft. (7%)
Pavement Coverage	1,100 sq. ft. (2%)
Landscape Coverage	4,000 sq. ft. (6%)
Unimproved Area	53,700 sq. ft. (85%)
Parking Spaces	4
Zoning	RV-11
Plan Designation	Residential #7 - 10.9 dua
Project Density	3 dua
Ht abv fin grade	35 feet

Site: 2510 San Elijo Avenue, Cardiff, Encinitas, San Diego County.
APN 261-190-30 & 42.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director
and

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT
WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

ACKNOWLEDGEMENT

The undersigned permittee acknowledges
receipt of this permit and agrees to
abide by all terms and c
thereof.

Date

Signature

EXHIBIT NO. 5
APPLICATION NO.
6-88-535-A4
Original Coastal Development Permit
California Coastal Commission

COASTAL DEVELOPMENT PERMIT . 6-88-535
Page 2 of 5

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Transfer of Title of the Wetlands/Floodplain Area. Prior to the commencement of construction or within six (6) months from the date of Commission action to approve this permit, whichever occurs first, the applicant shall comply with one of the following:
 - (a) Submit evidence to the satisfaction of the Executive Director that title of the wetlands/floodplain portion of the applicant's property, and as generally shown on Exhibit 2 of the staff report and preliminary recommendation dated for CDP #6-88-535 December 21, 1988, has been transferred as a gift (as proposed in the permit application) to the Wildlife Conservation Board, Coastal Conservancy, California Department of Fish and Game or other public agency or private association acceptable to the Executive Director.

COASTAL DEVELOPMENT PERMIT J. 6-88-535
Page 3 of 5

SPECIAL CONDITIONS, continued:

OR

(b) If the intent of the applicant is not carried out pursuant to (a) above, the applicant shall record an irrevocable offer to dedicate in fee to the Wildlife Conservation Board, Coastal Conservancy, or to a private association acceptable to the Executive Director, an open space easement over the area shown on the attached Exhibit "3" and generally described as the wetland/floodplain portion of the applicant's property. The document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area. Said open space easement shall prohibit any alteration of landforms, placement or removal of vegetation, or erection of structures of any type, unless approved by the California Coastal Commission or its successor in interest.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances, except tax liens. The offer to dedicate shall be in a form and content acceptable to the Executive Director.

2. Open Space Deed Restriction. Prior to the issuance of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type, except as herein permitted, in the area shown on the attached Exhibit "3" and generally described as the area between the proposed residences and the wetlands boundary or northern limit of the area proposed to be dedicated to a public agency, without the written approval of the California Coastal Commission or successor in interest. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the restricted area, and shall be in a form and content acceptable to the Executive Director. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.

3. Grading and Erosion Control. The applicant shall comply with the following conditions related to grading and erosion control:

A. Prior to the issuance of the coastal development permit, the applicant shall submit final grading plans to the Executive Director for review and written approval. Said plans shall indicate that all grading activities shall be prohibited within the period from October 1 to March 31st of each year.

B. Prior to commencement of any grading activity, the permittee shall submit a grading schedule which indicates that grading will be completed within the permitted time frame designated in this condition and that any variation from the schedule shall be promptly reported to the Executive Director.

COASTAL DEVELOPMENT PERMIT .. 6-88-535
Page 4 of 5

SPECIAL CONDITIONS, continued:

C. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.

D. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.

4. Drainage Plan. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, a drainage and runoff control plan, including supporting hydrologic calculations based upon a six-hour, ten year rainstorm. This plan shall document that runoff from the roof will be collected and appropriately discharged. Runoff directed toward the lagoon shall be retained and discharged at a non-erosive velocity and elevation in order to protect the scenic resources and habitat values of the hillsides from degradation by scouring or concentrated runoff.

5. Assumption of Risk. Prior to the issuance of the coastal development permit, the applicant [and landowner] shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from flooding and from slope failure, and the (b) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

6. Revegetation/Landscape Plan. Prior to the issuance of the coastal development permit, the applicant shall submit a detailed revegetation and landscape plan indicating the type, size, extent and location of all plant materials, any proposed irrigation system and other landscape features to revegetate that portion of the slope that will be disturbed by the construction of the residence or the installation of the drainage system. Drought tolerant native plants shall be utilized to the maximum extent feasible to re-establish the area consistent with its present character. Invasive, non-native vegetation, including but not limited to iceplant, shall be removed in favor of such native plants. Special emphasis shall be given to the screening of the supports for the parking deck and installation of trees of substantial height along the southern building perimeter to break-up the building facade and to create a vegetative buffer between the residences. Said plan shall be submitted to, reviewed by and approved in writing by the Executive Director in consultation with the Department of Fish and Game.

COASTAL DEVELOPMENT PERMIT NO. 6-88-535
Page 5 of 5

SPECIAL CONDITIONS, continued:

7. Exterior Treatment. Prior to the issuance of the coastal development permit for the proposed project, the applicant shall submit for the review and approval in writing of the Executive Director a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed residence. Earth tones and building materials designed to minimize the project's contrast with the surrounding hillside and with the lagoon environment shall be utilized.

(8535P)

State of California - The Resources Agency

ARNOLD SCHWARZENEGGER, Governor



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



RECEIVED
JUN 16 2005

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

February 8, 2005

Mr. Keith Merkel
Merkel & Associates, Inc.
5434 Ruffin Road
San Diego, CA 92123

RE: Dan Stone residence deck at San Elijo Lagoon, Encinitas, California

Dear Mr. Merkel,

This letter has been prepared as a follow-up to our various discussions and your meeting With Mr. Tim Dillingham, San Elijo Lagoon Ecological Reserve manager for the Department. We have previously provide comments and concerns with the proposed Stone deck at 2512 San Elijo Avenue based on materials submitted to the Department for review. Unfortunately, in the present staffing crunch for state agencies, the Department was not able to provide as thorough a review as either you or we would have liked. Subsequent to the first submittals of material to the Department, you have collected additional information and provided a greater amount of detail regarding the proposed project. These materials along with our discussions and meeting have aided to clarify the issues and resolve concerns to the satisfaction of the Department. Because we have previously provided e-mail correspondence on this matter, I believe it is best to respond at this time with a formal letter rather than a subsequent e-mail. This letter replaces all prior correspondence from the Department and outlines our concurrence as to the agreement reached between you and the Department related to the proposed deck.

As you are aware, policies 10.6 and 10.10 of the Resource Management Element of the Encinitas General Plan state that a minimum 100-foot wetland buffer shall be maintained upland of salt water wetlands (10.6), including San Elijo Lagoon (10.10). However, policy 10.10 states that "In some cases, smaller buffers may be appropriate, when conditions of the site...show that a smaller buffer would provide adequate protection." To achieve this allowable exception, it is necessary to demonstrate that a smaller buffer would provide adequate protection to existing resources. For the proposed Stone deck, we believe this exception does apply when considering the relevant circumstances existing and the proposed project modifications you have worked out with the Department. These are outlined below.

EXHIBIT NO. 6
APPLICATION NO.
6-88-535-A4
Dept. Fish and Game Letter and Email
Page 1 of 4
California Coastal Commission

Mr. Keith Merkel
February 8, 2005
Page 2 of 3

It is our understanding that the proposed deck would be supported on existing concrete pylons and that no new support structures would be required. Access to the top of these structures can and does presently occur by residents. As such, the area of the proposed deck is an existing use area associated with an existing dwelling. Further, this area occurs within the outer 50 feet of the designated buffer under the City's General Plan. This area is within an area of expanded buffer designation for which the expansion of the buffer post-dates the present uses on the site. The proposed deck would be located approximately 18 feet above the lagoon and would be surrounded by a 42-inch high glass wall. There would not be any down slope access points and thus the deck would further curtail resident and domestic animal access to the lagoon shoreline from the northern portion of the parcel. We also understand that Mr. Stone has met with the San Elijo Lagoon Foundation and has agreed to remove pampas grass from his property to enhance the quality of the narrowed buffer.

You and Mr. Dillingham reviewed the deck features currently incorporated into the design. During this meeting, we raised concerns regarding expansion of access and thus potential increased risk of lagoon area avoidance by avian species using the northern shoreline. To address this, we requested that the deck be pulled back to the plane defined by the existing pylon face with an allowance of no more than 2 feet of cantilevered overhang to provide a suitable aesthetic fascia. We requested that the glass rail be tinted or smoked to minimize the potential of bird collisions on the rail and to provide an increased visual screening between the marsh edge and activities on the deck. We also requested that deck lighting be of a low intensity and directed away from the marsh to minimize any potential adverse effects of increased illumination within the marshlands.

We had discussed the potential for having enhancement performed within the reduced buffer area. However, the Department agrees with you that the design modifications along with the proposed pampas grass removal do appear to appropriately balance the reduced buffer width with improved buffering effects under the specific circumstances outlined. We did discuss the possibility of obtaining an authorization for buffer enhancement work to be performed by others in the future within the space between the proposed deck and the lagoon. We understand that this would not be an issue with Mr. Stone provided it does not further restrict any rights he may presently enjoy relative to his property and allowable uses.

Based on the discussions and understandings we have reached, the Department would not object to the proposed deck provided that:

- 1) The deck shall not extend beyond the forward plane of the existing concrete pylons plus not more than 2 feet to allow for installation of a fascia;
- 2) A 42-inch high rail shall surround the deck and no exits towards the lagoon are to be incorporated into the rail. If the rail is to be glass, it shall be smoked or tinted to make it visible to birds;

Mr. Keith Merkel
February 8, 2005
Page 3 of 3

- 3) Lighting shall be of a low intensity and shall be directed away from the marsh;
- 4) Pampas grass removal within the buffer is proposed to occur in association with the proposed work; and,
- 5) Future enhancement of the buffer may occur by others, provided the work does not reduce or restrict the property owner's rights, as they currently exist on the property.

We believe that this letter correctly summarizes our discussion and mutual understanding concerning implementing a reduced biological buffer for the proposed project. We appreciated your clarification regarding the proposed project and willingness to work with Department staff to mutually address outstanding concerns. If you have any questions regarding the actions and conditions for Departmental support, please contact Mr. Tim Dillingham at (858) 467-4204

Sincerely,



For Theresa A. Stewart
Senior Biologist
Lands Management and Monitoring
Program

cc: Department of Fish and Game
Donald Chadwick
Nancy Frost
Tim Dillingham

TS/td

Stonedeck2005.doc

Keith W. Merkel

From: Tim Dillingham [TDilling@dfg.ca.gov]
Sent: Monday, November 14, 2005 9:18 AM
To: Keith W. Merkel
Cc: gcannon@coastal.ca.gov; lmceachern@coastal.ca.gov
Subject: Re: Stone Deck

The proposed species to be planted are acceptable to the Department. The proposed plant species will provide additional foraging and cover for upland bird species as well as marsh associated species, and will also provide cover to marsh species during flood events. Thank you for the opportunity to comment on this project. Any questions regarding this email may be directed to me through this email address or by phone at: 858 467 4204.

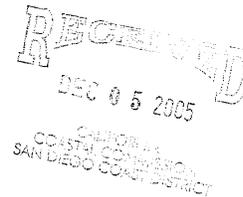
>>> "Keith W. Merkel" <KMerkel@merkelinc.com> 11/14/2005 8:56 AM >>>

Hi Tim,

The Coastal Commission has requested that we incorporate native landscaping at the Stone deck project and seek concurrence from the Department and City fire department that this does not create any new issues. As we discussed, the plants to be incorporated are toyon (*Heteromeles arbutifolia*) and San Diego marsh elder (*Iva hayesiana*) species, an existing Redberry will also be allowed to grow out from its presently manicured condition. The proposed toyon plantings would be two shrubs located between the proposed deck and the house to provide some screening of the home. Iva will be located over the bridgeway rail where it will be allowed to hang down to screen the bridgeway. Iva will also be planted along the slope where a gunite cap is to be removed in order to provide for bank erosion stabilization and vegetation cover.

If this does not cause any concern for the Department, please respond to this e-mail. If there is a concern, please give me a call so that I may work with you to address it.

Thanks,
Keith



TOYON
(*Heteromeles arbutifolia*)

